

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

HENRY A. GAILLARD,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 3:08-CV-461-WKW
)	
R. JAMES NICHOLSON, <i>Secretary,</i>)	
<i>Department of Veterans Affairs,</i>)	
)	
Defendant.)	

MEMORANDUM OPINION & ORDER

On October 31, 2008, the Magistrate Judge filed a Report and Recommendation (“Recommendation”) in this case. (Doc. # 40.) Plaintiff Henry A. Gaillard (“Gaillard”) objected to the Recommendation. (Doc. # 44.) Gaillard objects that a review of the evidence “will confirm that appropriate administrative avenues were exhausted.”¹ (Doc. # 44 ¶ 2.) The portions of a recommendation to which a defendant objects are reviewed *de novo*. 28 U.S.C. § 636(b)(1)(C).

A *de novo* review of the record and law confirms that the Magistrate Judge’s Recommendation (Doc. # 40) to grant Defendant’s Motion to Dismiss, or in the Alternative, Motion for Summary Judgment (Doc. # 32) should be adopted because Gaillard failed to exhaust his administrative remedies. Therefore, it is ORDERED that:

1. Gaillard’s objections (Doc. # 44) are OVERRULED.

¹ Gaillard also objects to issues not particular to the recommendation.

2. The Recommendation of the Magistrate Judge (Doc. # 40) that Defendant's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment (Doc. # 32) is ADOPTED, and the case is DISMISSED without prejudice based upon Gaillard's failure to exhaust administrative remedies.

3. Defendant's motion (Doc. # 32) is GRANTED.

4. Plaintiff's request for appointment of counsel (Doc. # 35 ¶ 5) is DENIED AS MOOT.

5. This case is DISMISSED with prejudice.

DONE this 17th day of February, 2009.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE